IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Chapter VIII, Rule 32(2) (b)
Description of case

Special Appeal No. 38 of 2004

Date of decision:- 7th March, 2006

A.F.R. (Approved for Reporting)

~~Not Approved for Reporting~~

Date: 7.3.2006 Initials of Judge

Note: Bench Reader will attach this at the top of first page of the judgment when it is put up before the Judge for signature.

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Special Appeal No. 38 of 2004

Secretary,
Uttaranchal Shiksha Evam Pariksha Parishad,
Ramnagar, District Nainital. …… Appellant

Versus

1. Amar Dhyani S/o Sri B.L. Dhyani,
   R/o 6, Oak Park, Post Office Mallital,
   Nainital.
2. State of Uttaranchal,
   through Secretary, Education Department,
   Uttaranchal Govt., Dehradun. ……. Respondents

Mr. Deepak Sharma, Advocate representing Mr. V.K. Bisht, Senior Advocate for the appellant.
Mr. Subhash Upadhyaya, Advocate for respondent No. 1.
Mr. N.C. Gupta, Standing Counsel for the State of Uttaranchal.

JUDGMENT

Coram: Hon. Rajeev Gupta, C.J.
Hon. M.M. Ghildiyal, J.

RAJEEV GUPTA, C.J. (Oral)

Mr. Deepak Sharma, advocate on behalf of Mr. V.K. Bist, Senior Advocate for appellant Uttaranchal Shiksha Evam Pariksha Parishad.

Mr. Subhash Upadhyaya, Advocate for respondent No. 1.

Mr. N.C. Gupta, Standing Counsel for respondent No. 2.

With the consent of the learned counsel for the parties, the appeal is finally heard.

2. Appellant Uttaranchal Shiksha Evam Pariksha Parishad has filed this special appeal against the impugned judgment dated 07.08.2004 passed in Writ Petition No. 159 of 2004 (M/S), whereby the appellant Parishad was directed to award average marks to the petitioner in the subject of Mathematics in accordance with Rules and issue him fresh mark sheet accordingly within a period of three weeks after the receipt of the certified copy of the order.

3. Respondent No. 1 Amar Dhyani filed the writ petition for the following reliefs:

"1.Issue a writ order or direction in the nature of mandamus commanding the respondent no. 2 to produce the answer book of the subject Mathematics Ist and IInd paper and to reevaluate the same.

2.Issue a writ order or direction in the nature of mandamus commanding the respondent to call for the record of answer sheet of the subject Mathematics Ist and IInd paper.

3.Issue a suitable writ order or direction which this Hon'ble Court may deem fit and proper in view of the facts and circumstances of the case.

4.Award the cost of the present writ petition in favour of the petitioner."

4. The writ petitioner appeared in the High School Examination held in the year 2003. when the results for the said Examinations were declared, the petitioner was surprised to know that though he secured 47% marks in other subjects, he was declared failed as he could secure only '22' marks out of '100' in Mathematics (Ist Paper 10 out of 50 and IInd Paper 12 out of 50). The petitioner, harbouring under the impression that his answer sheets for the subject of Mathematics were not properly evaluated, filed the writ petition seeking a direction to the respondents to produce the said answer sheets before the Court and to revaluate the same.

5. In the counter affidavit filed on behalf of appellant Parishad, it was categorically stated in paras 8 and 10 that there is no provision for revaluation of the answer sheets in the Regulations made under U.P. Intermediate Education Act, 1921. It was further stated in the counter affidavit that the petitioner's answer sheets for the subject of Mathematics were subjected to scrutiny in the presence of the guardian of the petitioner. In the supplementary counter affidavit to the rejoinder affidavit filed by the petitioner, it was further stated in paras 5 and 6 that marks can be awarded on the basis of 'Average Marking' to those candidates only whose answer sheets are not traceable in the Board Office and such marks are awarded after the decision of the Examination Committee. It was the specific case of the appellant Parishad that, as in the present case, the petitioner's answer sheets were available and were scrutinized by the subject

expert in the presence of the guardian of the petitioner, there was no question of award of marks on the basis of 'Average Marking'.

6. the learned Single Judge, on considering the pleadings of the parties and the decision in the case of **Astik Kumar Pandey Vs. Director / Chairman BHS and IE U.P.** reported in **(2001) 3 UPLBEC 2088.** passed the impugned judgment directing the appellant Parishad to award marks to the petitioner in the subject of Mathematics on the basis of 'Average Marking'.

7. Mr. Deepak Sharma, learned counsel for the appellant submitted that the writ petition, itself, was not maintainable, as there is no provision for revaluation in the Regulations framed under the U.P. Intermediate Education Act, 1921. The learned counsel further submitted that the learned Single Judge has erred in directing award of marks on the basis of 'Average Marking', as the petitioner's answer sheets for the subject of Mathematics were available and, in fact, evaluated by the subject expert.

8. Mr. Subhash Upadhyaya, learned counsel for the first respondent supported the impugned judgment and submitted that as the petitioner's answer sheets for the subject of Mathematics were not produced before the learned Single Judge on the ground that the same were weeded out on 10.02.2004, no fault can be found with the impugned direction for award of marks on the basis of 'Average Marking'.

9. So far as the petitioner's prayer in the writ petition for a direction to the respondents to revaluate his answer sheets for the subject of Mathematics is concerned, we need not dilate much on this issue in view of the dictum of the Apex Court in the case of **Maharashtra State Board of Secondary and Higher Secondary Education and another Vs. Paritosh Bhupeshkumar Sheth and others** reported in **(1984) 4 SCC 27,** wherein it was observed in para 27 as under:

> "27. The High Court has relied upon the fact that the University of Bombay and some other Universities have recently made provisions permitting candidates to demand revaluation. In our opinion, this has little relevance for the purpose of deciding about the legal validity of the impugned regulations framed by the Board. We do not know under what circumstances, the University of Bombay has decided to recognise a right in the examinees to demand a revaluation. As far as the Board is concerned it has set out in the counter-affidavit the enormity of the task with which it is already faced, namely, of completing twice during each year the process of evaluation and release of results of some 3 lacs of candidates appearing for the S.S.C. and H.S.C. examinations to be held in an interval of only a few months from one another. If the candidates are all to be given inspection of their answer books or the revaluation of the answer papers is to be done in the presence of the candidates, the process is bound to be extremely time consuming and if such a request is made by even about ten per cent of the candidates who will be 30,000 in number, it would involve several thousands of man hours and is bound to throw the entire system out of gear. Further, it is in the public interest that the results of public examinations when published should have some finality attached to them. If inspection, verification in the presence of the candidates and revaluation are to be allowed as of right, it may lead to gross and indefinite uncertainty, particularly in regard to the relative ranking, etc. of the candidates, besides leading to utter confusion on account of the enormity of the labour and time involved in the process."

10. The Apex Court in the above case, whole outlining the scope of interference by the courts in educational matters, further observed in para 29 as under:

> "29. Far from advancing public interest and fair play to the other candidates in general, any such interpretation of the legal position would be wholly defeasive of the same. As has been repeatedly pointed out by this Court, the Court should be extremely reluctant to substitute its own views as to what is wise, prudent and proper in relation to academic matters in preference to those formulated by professional men possessing technical expertise and rich experience of actual day-to-day working of educational institutions and the departments controlling them. It will be wholly wrong fro the Court to make a pedantic and purely idealistic approach to the problems of this nature, isolated from the actual realities and grass root problems

> involved in the working of the system and unmindful of the consequences which would emanate if a purely idealistic view as opposed to a pragmatic one were to be propounded. It is equally important that the Court should also, as far as possible, avoid any decision or interpretation of a statutory provision, rule or by-law which would bring about the result of rendering the system unworkable in practice. It is unfortunate that this principle has not been adequately kept in mind by the High Court while deciding the instant case."

11. Thus, from the above-quoted observations of the Apex Court, it is apparent that the courts cannot direct revaluation in the absence of an express provision in that behalf in the Regulations.

12. The Circular issued by the appellant Parishad providing for award of marks on the basis of 'Average Marking' is applicable to those cases only where the answer sheets, for one reason or the other, are not available even for initial evaluation. In the present case, it is not in dispute that the petitioner's answer sheets for the subject of Mathematics were, in fact, evaluated and the petitioner secured '10' marks in the Ist Paper and '12' in the IInd Paper. We further gather that thereafter his answer sheets for the subject of Mathematics were subjected to scrutiny in the presence of the petitioner's guardian.

13. From the above discussion, it emerges out that there is no provision for 'Revaluation' in the Regulations framed under the U.P. Intermediate Education Act, 1921: the Circular providing for award of marks on the basis of 'Average Marking' is applicable only to those cases where the answer sheets for the candidate are not available for initial evaluation; the petitioner's answer sheets for the subject of Mathematics were, in fact, evaluated; and the said answer sheets were further subjected to scrutiny in the presence of the petitioner's guardian. The non-availability of the petitioner's answer sheet before the Court for 'Revaluation' would not attract the said Circular providing for award of marks on the basis of 'Average Marking' for the simple reason that the Regulations do not contain any provision for 'Revaluation'. Thus, we have no manner of doubt that the direction contained in the impugned judgment for award of marks to

the petitioner in the subject of Mathematics on the basis of ‘Average Marking’ cannot legally be sustained.

14. The special appeal, therefore, is allowed and the impugned judgment dated 07.08.2004 passed in Writ Petition No. 159 of 2004 (M/S) is, hereby, set aside and the writ petition is dismissed. No order as to costs.

(M.M. Ghildiyal, J.) **(Rajeev Gupta, C.J.)**
07.03.2006 **07.03.2006**

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